



Addressing Legal Issues relating to Student Safety in Off-Campus Applied Learning

I. Introduction

Students attending the State University of New York (“SUNY”) are increasingly seeking practical experience in their fields of study during their course work. Campuses across the system are increasing efforts to make these applied learning activities available to SUNY students. Applied learning involves activities occurring outside of the traditional classroom experience and/or embedded as part of a course. These experiences often call for the student to engage in practical experience at an off-campus site.

The safety of SUNY students participating in off-site learning is a priority. The Office of General Counsel has been working in conjunction with the Office of the Provost, including the Director of Applied Learning, to develop resources for the individuals in the campus community, both faculty and administrators, who are involved in assisting students in all stages of the applied learning process. These resources are intended to guide the campuses in ensuring that the proper legal structures are in place when students opt to participate in applied learning opportunities.

II. Overview of Types of Applied Learning

The legal requirements of an applied learning experience generally depend on how that particular experience has been designated and defined. This analysis includes consideration of factors including, but not limited to, the following:

1. Whether the affiliation between SUNY and the host site is for clinical or non-clinical purposes;
2. Whether students are receiving academic credit;
3. Whether students are being paid or receiving a stipend;
4. Whether students are volunteering or participating in community service and whether that volunteer work is for SUNY or an outside entity;
5. Whether the applied learning opportunity is international;
6. Whether SUNY has a Cooperative Education Agreement in place with the outside entity participating in the applied learning opportunity (e.g. PepsiCo).

The Office of General Counsel works with campus clients in this field offering case-by-case guidance in order to assess applied learning opportunities and put the proper legal safeguards in place to protect both the university and its students.

III. Laws Affecting Applied Learning

The following includes general information regarding the laws and standards that may be applicable in assessing applied learning opportunities:

1. General Liability

- a. SUNY students currently are not covered by the NYS Court of Claims Act or Public Officers Law Section 17 for defense and indemnification of their negligent acts while participating in affiliations or internships for credit or practical experience in their chosen academic field. SUNY, on behalf of its campuses, and at the campus's expense, procures a commercial liability insurance policy to cover the defense and indemnification of *students who participate in affiliations and internships in certain academic areas and under certain conditions as set by the carrier*. Student affiliation liability insurance, as purchased by SUNY, is provided to cover students' negligent acts and omissions while participating in activities of the affiliation at the host institution. Not all students participating in all applied learning opportunities will require or be eligible for insurance coverage. Analysis of whether insurance coverage is necessary is done on a case-by-case basis.

2. Fair Labor Standards Act (FLSA)

- a. This federal law governs whether interns must be paid the minimum wage and overtime under the FLSA for the services that they provide.

3. NYS Labor Law

- a. Section 511(17) of NYS Labor Law includes a discussion of unemployment insurance, noting that for unemployment insurance issues, "employment" does not include service performed by an individual enrolled at a public educational institution as a student in a full-time program taken for credit which combines academic instruction with work experience that is an integral part of the program.

4. NYS Education Law

- a. SUNY is not required to provide insurance coverage for students participating in student teaching. Under Sections 3023 and 2560 of NYS Ed. Law, local school districts are required to provide student teachers with liability insurance coverage just as they do for their regular teachers and employees.

5. Worker's Compensation

- a. Issues of worker's compensation are decided chiefly by determination of employee status. The question then becomes whether the student is an employee of the agency providing the internship, the College, or neither. When an intern is paid by an employer, they are likely to be deemed an employee for worker's compensation purposes.

IV. Role of Counsel's Office

The legal implications of a particular applied learning opportunity depend on the specifics of that opportunity and how it has been defined or designated. In order for both the university and the students to be protected when it comes to applied learning, it is often necessary to create formal written agreements memorializing these affiliations/relationships. Such formal processes are not always required, however.

Counsel's Office has worked with the Office of Applied Learning to develop criteria for SUNY-developed internships and cooperative education opportunities. As is the case with the InternShop partnership, employers developing new opportunities for students through partnership with the Office of Applied Learning will:

- Create cooperative education and formal internship opportunities for 15 week periods in fall and spring and 12 weeks in summer;
- Provide appropriate worksite supervision and corporate compensation of at least minimum wage;
- Provide orientation and ensure adequate workspace, oversight, assignments, and a safe work environment;
- Work with appropriate academic partners to develop student learning contracts, reflection materials, and assessments when necessary;
- Provide students with formal documentation of their work;
- Grant an interview for full employment following the placement; and
- Ensure company is compliant with all applicable laws, including, but not limited to, the Fair Labor Standards Act and the US Department of Labor guidelines.

The Office of General Counsel continues to develop resources for campus clients to utilize in ensuring that all proper legal safeguards are in place for particular applied learning opportunities. Counsel's Office is always available as a resource to answer questions regarding specific applied learning experiences.

